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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

HEUNG MAN WONG and JOHN DOES 1-100,
on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

NEWMAN'S OWN, INC.,

Defendant.

Case No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs, HEUNG MAN WONG and JOHN DOES 1-100, on behalf of themselves and all others similarly situated in the United States of America, by and through their undersigned counsel, hereby bring this class action against Defendant, NEWMAN'S OWN, INC. (hereinafter, "NEWMAN'S OWN" or "Defendant"), and alleges the following upon their own knowledge, or where they lack personal knowledge, upon information and belief, including the investigation of their counsel:

NATURE OF THE ACTION

1. Consumers attribute a wide range of benefits to foods made entirely of natural ingredients. Consumers perceive all-natural foods to be higher quality, healthier, safer to eat and less damaging to the environment.

2. In a survey conducted by the Shelton Group in 2009, the most popular food label among consumers was "100% natural."[1] "All natural ingredients" was the second most popular food label among consumers and both of those labels beat out "Contains natural ingredients."[2]

3. While food manufacturers have sought to capitalize on this fast-growing market for natural products, now a multi-billion dollar industry, not all manufacturers truthfully represent the nature and quality of their products. Some manufacturers seek to capture a share of the market by touting their products as "All Natural" when in fact, they are not.

4. NEWMAN'S OWN is an example of a manufacturer who has sought to exploit the market for natural products. At all material times hereto, NEWMAN'S OWN has unlawfully, fraudulently, unfairly, misleadingly, and/or deceptively represented that it's NEWMAN'S OWN® pasta sauce products are "All Natural" when they contain citric acid, a non-natural, chemically processed ingredient.

5. Merriam-Webster's Dictionary defines "natural"[3] as an adjective as follows:

i. "existing in nature and not made or caused by people : coming from nature"

ii. "not having any extra substances or chemicals added : not containing anything artificial"

6. Merriam-Webster's Dictionary defines "synthetic"[4] as an adjective as follows:

i. "made by combining different substances : not natural"

7. Merriam-Webster's Dictionary defines "artificial"[5] as an adjective as follows:

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[1] *See, e.g.*, Consumers Prefer'100% Natural' Label Over 'Organic', Environmental Leader (Jul. 3, 2009), http://environmentalleader.com/2009/07/03/consumers-prefer-100-natural-label-over-organic (describing EcoPulse market report by Shelton Group) (last visited March 10, 2014).
[2] *Id.*
[3] *See* http://www.merriam-webster.com/dictionary/natural (last visited October 19, 2015).
[4] *See* http://www.merriam-webster.com/dictionary/synthetic (last visited October 19, 2015).
[5] *See* http://www.merriam-webster.com/dictionary/artificial (last visited October 19, 2015).

i. "not natural or real : made produced, or done to seem like something natural"

ii. "not happening or existing naturally : created or caused by people"

8. As demonstrated by the definitions above, and believed by Plaintiffs and other reasonable consumers, the term "natural" does not apply to products that contain artificial or synthetic ingredients, which are not natural by their very definitions.

9. The term "natural" only applies to those products that contain no natural or synthetic ingredients and consist entirely of ingredients that are only minimally processed. Defendant however, deceptively used the term "natural" to describe a product containing ingredients that have been either extensively chemically processed or fundamentally altered from their natural state and thus cannot be considered "minimally processed." The use of the term "natural" to describe such product creates consumer confusion and is misleading. Plaintiffs allege that the Defendant dishonestly describes their NEWMAN'S OWN® pasta sauce products as being "All Natural" when, in fact, they are not.

10. At all material times hereto, Defendant has manufactured, marketed and distributed its NEWMAN'S OWN® pasta sauce Products (defined below) with labels that claim the products are "All Natural" when the product is certainly not "All Natural." The addition of citric acid, a synthetic and/or artificial ingredient in Defendant's NEWMAN'S OWN® pasta sauce products causes them to not be natural, rendering Defendant's claim false, misleading, and likely to deceive reasonable consumers.

11. The pasta sauce product line is comprised of the following 15 oz. and 24 oz. products containing added citric acid:

i. Alfredo Pasta Sauce
ii. Cabernet Marinara Sauce

iii. Fire Roasted Tomato & Garlic Pasta Sauce
iv. Five Cheese Pasta Sauce
v. Fra Diavolo Pasta Sauce
vi. Garden Peppers Pasta Sauce
vii. Italian Sausage & Peppers Pasta Sauce
viii. Marinara Pasta Sauce
ix. Marinara with Mushrooms Pasta Sauce
x. Roasted Garlic & Peppers Pasta Sauce
xi. Roasted Garlic Alfredo Pasta Sauce
xii. Roasted Garlic Pasta Sauce
xiii. Sockarooni Pasta Sauce
xiv. Sweet Onion and Roasted Garlic Pasta Sauce
xv. Tomato & Basil Bombolina Pasta Sauce
xvi. Vodka Pasta Sauce
xvii. Any Newman's Own pasta sauce Product that contains citric acid (collectively, the "Products").

12. By marketing the NEWMAN'S OWN® Products as "All Natural," Defendant is taking wrongful advantage of consumers' strong preference for foods made entirely of natural ingredients.

13. As shown in **EXHIBIT A**, the representation that the NEWMAN'S OWN® Products is made of "All Natural Ingredients" is central to the marketing of the Product and is clearly and prominently displayed on the front packaging and cap, where it cannot be missed by consumers.

14. Defendant has unjustly profited in the lucrative market for natural foods by misleadingly labeling its NEWMAN'S OWN® Products as "All Natural" and selling them to consumers who sought to purchase products made from ingredients that are naturally occurring and who were willing to pay more for such foods.

15. This lawsuit seeks redress for the deceptive manner in which Defendant has and continues to market its NEWMAN'S OWN® Products to the general public. Plaintiffs bring this proposed consumer class action individually and on behalf of all other persons nationwide, who, from the applicable limitations period up to and including the present ("Class Period"), purchased NEWMAN'S OWN® Products for consumption and not resale.

16. Plaintiffs expressly do not seek to contest or enforce any state law that has requirements beyond those required by federal laws or regulations.

JURISDICTION AND VENUE

17. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332, because this is a class action, as defined by 28 U.S.C § 1332(d)(1)(B), in which a member of the putative class is a citizen of a different state than Defendant, and the amount in controversy exceeds the sum or value of $5,000,000, excluding interest and costs. *See* 28 U.S.C. § 1332(d)(2).

18. The Court has jurisdiction over the federal claims alleged herein pursuant to 28 U.S.C. § 1331 because it arises under the laws of the United States.

19. The Court has jurisdiction over the state law claims because they form part of the same case or controversy under Article III of the United States Constitution.

20. Alternatively, the Court has jurisdiction over all claims alleged herein pursuant to 28 U.S.C § 1332 because the matter in controversy exceeds the sum or value of $75,000 and is between citizens of different states.

21. This Court has personal jurisdiction over Plaintiffs because Plaintiffs submit to the Court's jurisdiction. This Court has personal jurisdiction over Defendant, pursuant to New York Statute N.Y. CVP. Law § 302, because it conducts substantial business in this District, some of the actions giving rise to the Complaint took place in this District, and some of Plaintiffs' claims arise out of Defendant operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state; committing a tortious act in this state; and causing injury to person or property in this state arising out of Defendant's acts and omissions outside this state. Additionally, this court has personal jurisdiction over Defendant because their Products are advertised, marketed, distributed, and sold throughout New York

State; Defendant engaged in the wrongdoing alleged in this Complaint throughout the United States, including in New York State; and Defendant has sufficient minimum contacts with New York and/or otherwise have intentionally availed itself of the markets in New York State, rendering the exercise of jurisdiction by the Court permissible under traditional notions of fair play and substantial justice. Moreover, Defendant is engaged in substantial and not isolated activity within New York State.

22. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to these claims occurred in this District, the Defendant has caused harm to class members residing in this District, and the Defendant is residents of this District under 28 U.S.C. 1391(c)(2) because it is subject to personal jurisdiction in this district.

PARTIES

Plaintiffs

23. Plaintiff WONG is, and at all times relevant hereto has been, a citizen of the State of New York and resides in Queens County. During the Class Period, Plaintiff WONG purchased NEWMAN'S OWN® Products for personal consumption within the State of New York. Plaintiff purchased the 24 oz. NEWMAN'S OWN® Marinara Pasta Sauce Product from a Target store located in Queens County in reliance on the "All Natural" claim printed boldly on the front label. The purchase price was approximately $2.49 (or more) for an individual bottle of the Product. Plaintiff WONG purchased the Product at a premium price and was financially injured as a result of Defendant's deceptive conduct as alleged herein. Further, should Plaintiff WONG encounter the Products in the future, he could not rely on the truthfulness of the packaging, absent corrective changes to the packaging. However, Plaintiff WONG would still be willing to

purchase the current formulation of the Products, absent the price premium, so long as Defendant engages in corrective advertising.

24. Plaintiffs JOHN DOES 1-100 are and, at all relevant times hereto, have been citizens of the state of New York. Plaintiffs JOHN DOES 1-100 have purchased the Products for personal consumption within the State of New York. Plaintiffs JOHN DOES 1-100 purchased the Products at a premium price and were financially injured as a result of Defendant's deceptive conduct as alleged herein.

Defendant

25. Defendant NEWMAN'S OWN FOODS, INC. is a corporation organized under the laws of Connecticut with its headquarters at One Morningside Drive North, Westport, CT 06880 and an agent for service of process at R&C Service Company, 280 Trumbull Street, Hartford, CT 06103. Defendant develops, markets and sells food products, including dressings, sauces, frozen pizzas, salsas, snacks, oils, and skillet meals, under the "NEWMAN'S OWN®" brand name throughout the United States.

26. Defendant owns, manufactures and distributes NEWMAN'S OWN® Products, and created and/or authorized the unlawful, fraudulent, unfair, misleading and/or deceptive labeling and advertising for the Products. The product label for NEWMAN'S OWN® Products, relied upon by Plaintiffs, was prepared and/or approved by Defendant and its agents, and was disseminated by Defendant and its agents with the "All Natural" misrepresentation alleged herein. The Products' packaging and labels were designed to encourage consumers to purchase NEWMAN'S OWN® Products and reasonably misled Plaintiffs and the Class into purchasing the Products.

27. Plaintiffs allege that, at all times relevant herein, NEWMAN'S OWN FOODS, INC. and its subsidiaries, affiliates, and other related entities, as well as their respective employees, were the agents, servants and employees of NEWMAN'S OWN FOODS, INC., and at all times relevant herein, each was acting within the purpose and scope of that agency and employment. Plaintiffs further allege on information and belief that at all times relevant herein, the distributors who delivered and sold the Products, as well as their respective employees, also were NEWMAN'S OWN FOODS, INC.'s agents, servants and employees, and at all times herein, each was acting within the purpose and scope of that agency and employment. In addition, Plaintiffs allege that, in committing the wrongful acts alleged herein, NEWMAN'S OWN FOODS, INC., in concert with its subsidiaries, affiliates, and/or other related entities and their respective employees, planned, participated in and furthered a common scheme to induce members of the public to purchase the Product by means of untrue, misleading, deceptive, and/or fraudulent representations, and that NEWMAN'S OWN FOODS, INC. participated in the making of such representations in that it disseminated those misrepresentations and/or caused them to be disseminated.

28. Whenever reference in this Complaint is made to any act by NEWMAN'S OWN FOODS, INC. or its subsidiaries, affiliates, distributors, and other related entities, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and/or representatives of NEWMAN'S OWN FOODS, INC. committed, knew of, performed, authorized, ratified and/or directed that act or transaction on behalf of NEWMAN'S OWN FOODS, INC. while actively engaged in the scope of their duties.

FACTUAL ALLEGATIONS

Defendant's Advertising of NEWMAN'S OWN® Products

29. NEWMAN'S OWN FOODS, INC. manufactures, distributes, markets, advertises and sells NEWMAN'S OWN® Products with the claim that they are "All Natural." The Products are available at grocery stores, food chains, convenience stores, and other retail outlets throughout the United States as well as on Defendant's NEWMAN'S OWN online store (located at http://www.newmansown.com/food/type/sauce/).

30. Defendant's "All Natural" statement, displayed on the front of the NEWMAN'S OWN® Products packaging for the Products, is untrue, misleading, and likely to deceive reasonable consumers, such as Plaintiffs and members of the Class, because the Products are not "All Natural," due to the addition of citric acid, a synthetic and/or artificial ingredient in the Products.

31. As the "All Natural" statement on the Product is clearly and prominently displayed on the front of each individual bottle of NEWMAN'S OWN® Products, Plaintiffs and all consumers within the Class who purchased the Products were exposed to the same misleading "All Natural" claim.

32. Plaintiffs and the Class were charged a price premium for the allegedly "All Natural" Products over pasta sauce products that did not claim to be "All Natural."

33. Defendant's "All Natural" representation conveys a series of express claims which Defendant knows are material to the reasonable consumer, and which Defendant intends for consumers to rely upon when choosing to purchase NEWMAN'S OWN® Products.

NEWMAN'S OWN® Pasta Sauce Products Are Not All Natural

34. The United States Food and Drug Administration ("FDA"), which has responsibility for regulating the labeling of food products such as the NEWMAN'S OWN® Products sold by Defendant, has not promulgated a regulation defining the terms "natural" or "All Natural."

Courts and trade members have requested that the FDA provide a regulatory definition of the term, but, the FDA has declined to provide a determination because the time required to conduct a public hearing "would take two to three years to complete," and the agency's resources are currently devoted to other, higher priorities.[6] However, the agency has established a policy defining the outer boundaries of the use of the term "natural" by clarifying when a product is not natural.

35. With regard to the meaning of "natural" on a food label, the agency has said as follows: "FDA has not developed a definition for use of the term natural or its derivatives. However, the agency has not objected to the use of the term **if the food does not contain added color, artificial flavors, or synthetic substances.**"[7] Other informal guidance issued by the FDA on the term "natural" in the context of food has also understood it "as meaning that nothing artificial or synthetic (including all color additives regardless of source) has been included in , or has been added to, a food that would not normally be expected to be in the food." [8]

36. Thus, although there is not an exacting definition of "natural" in reference to food, there is no reasonable definition of "natural" that includes ingredients that, even if sourced from "nature" (as all product ingredients must be), are subjected to extensive transformative chemical processing before their inclusion in a product. For example, the National Advertising Division of the Better Business Bureau ("NAD") has found that a "natural" ingredient does *not* include one that, while "literally sourced in nature (as is every chemical substance), . . . is, nevertheless

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[6] *See* Letter from Michael M. Landa, Acting Director, Center for Food Safety and Applied Nutrition to Judge Jerome B. Simandle dated September 16, 2010, filed in *Ries et al., v. Hornell Brewing Co., Inc.*, Case No. 10-1139 (N.D. Cal.), Docket No. 54.

[7] http://www.fda.gov/AboutFDA/Transparency/Basics/ucm214868.htm

[8] *See* Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food, 58 Fed. Reg. 2302, 2407 (Jan. 6, 1993), available at http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/FoodAdvisoryCommittee/UCM248504.pdf.

subjected to extensive processing before metamorphosing into the" ingredient that is included in the final product. *Tom's of Maine (Tom's of Maine Natural Mouthwash)*, Report #3470, NAD/CARU Case Reports 4 (June 1998).

37. Similar to the FDA, the United States Department of Agriculture ("USDA"), which regulates the labeling of meat and poultry, has also set limits on the use of the term "natural."

38. The USDA has issued a Foods Standards and Labeling Policy Book (Aug. 2005) for products it regulates, which states that the term "natural" may be used on labeling for products that contain processed ingredients only where such ingredients are subjected to "minimal" processing. *See* Office of Pol'y, Program & Emp. Dev. Food Safety & Inspection Serv., U.S. Dep't of Agric., *Food Standards and Labeling Policy Book* (2005).[9] According to the USDA, "[m]inimal processing may include: (a) those traditional processes used to make food edible or to preserve it or to make it safe for human consumption, e.g., smoking, roasting, freezing, drying, and fermenting, or (b) those physical processes which do not fundamentally alter the raw product and/or which only separate a whole, intact food into component parts, e.g., grinding meat, separating eggs into albumen and yolk, and pressing fruits to produce juices."[10] However, "[r]elatively severe processes, e.g., solvent extraction, acid hydrolysis and chemical bleaching would clearly be considered more than minimal processing."[11]

39. Under the USDA's guidelines, if a product is severely processed, the product can be labeled "All Natural" if the ingredient would not significantly change the character of the product to the point that it could no longer be considered a natural product. However, even in that case, "***the natural claim must be qualified to clearly and conspicuously identify the***

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[9] *See United States Department of Agriculture Food Standards and Labeling Policy book* available at http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf (last visited October 26, 2015).
[10] *Id.*
[11] *Id.*

ingredient, e.g., all natural or all natural ingredients except dextrose, modified food starch, etc."[12] (emphasis added).

40. The terms "synthetic" and "artificial" closely resemble each other and in common parlance are taken as synonymous. The scientific community defines "artificial" as something not found in nature, whereas a "synthetic" is defined as something man-made, whether it merely mimics nature or is not found in nature.[13]

41. Congress has defined "synthetic" to mean "a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes." 7 U.S.C. § 6502(21). *See also* C.F.R. § 205.1, *et seq* defining, in USDA's National Organic Program regulations, a "nonsynthetic (natural)" as "[a] substance that is derived from mineral, plant or animal matter and does not undergo a synthetic process as defined in section 6502(21) of the Act (7 U.S.C. § 6502(21)").

42. In addition to defining "synthetic," federal authorities have also expressly recognized certain chemicals as synthetics.

43. Citric acid (2-hydroxy-propane-1,2,3-tricarboxylic acid) is a synthetic, non-natural ingredient. While the chemical's name has the word "citric" in it, citric acid is no longer extracted from the citrus fruit but industrially manufactured by fermenting certain genetically mutant strains of the black mold fungus, *Aspergillus niger*.

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[12] United States Department of Agriculture Food Standards and Labeling Policy book, available at http://www.fsis.usda.gov/OPPDE/larc/Policies/Labeling_Policy_Book_082005.pdf (last visited October 23, 2015).
[13] Peter E. Nielsen, *Natural-synthetic-artificial!*, Artificial DNA: PNA & XNA, Volume 1, Issue 1 (July/August/September 2010), available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3109441/

44. A technical evaluation report for the substance citric acid compiled by the United States Department of Agriculture, Agricultural Marketing Service ("USDA AMS") for the National Organic Program classified citric acid as "Synthetic Allowed". See **EXHIBIT B**, Page 4, available at http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5067876. As one of the USDA AMS reviewers commented,

> "[Citric acid] is a natural[ly] occurring substance that commercially goes through numerous chemical processes to get to [its] final usable form. This processing would suggest that it be classified as synthetic." Id. at 3.

The report further explains, under the "How Made" question, that citric acid is made –

> "Traditionally by extraction from citrus juice, no longer commercially available. It is now extracted by fermentation of a carbohydrate substrate (often molasses) by citric acid bacteria, Aspergillus niger (a mold) or Candida guilliermondii (a yeast). Citric acid is recovered from the fermentation broth by a lime and sulfuric acid process in which the citric acid is first precipitated as a calcium salt and then reacidulated with sulfuric acid." Id. at 4.

45. Because citric acid is a synthetic acid and cannot be reasonably considered a natural ingredient, Defendant's claim that the Products are "All Natural" is false, deceptive, and misleading, and the Products are misbranded under federal and state law.

46. As NEWMAN'S OWN® Products contains citric acid, a synthetic and/or artificial ingredient, the claim that the Product is "All Natural" is both literally false and misleading under any reasonable definition of "natural."

The "All Natural" Claim on NEWMAN'S OWN® Pasta Sauce Products is Material to Reasonable Consumers

47. American consumers are health conscious and look for wholesome, natural foods to keep a healthy diet, so they frequently take nutrition information into consideration in selecting and purchasing food items. Product package labels, including nutrition labels, are vehicles that convey nutrition information to consumers that they can and do use to make purchasing

decisions. As noted by FDA commissioner Margaret Hamburg during an October 2009 media briefing, "[s]tudies show that consumers trust and believe the nutrition facts information and that many consumers use it to help them build a healthy diet."

48. The prevalence of claims about nutritional content on food packaging in the United States has increased in recent years as manufacturers have sought to provide consumers with nutrition information and thereby influence their purchasing decisions. The results of a recent FDA Food Label and Package Survey found that approximately 4.8% of food products sold in the United States had either a health claim or a qualified health claim on the food package, and that more than half (53.2%) of the food products reviewed had nutrient content claims on the packaging.

49. American consumers are increasingly seeking "All Natural" ingredients in the foods they purchase. Although this segment of the health food market was once a niche market, natural foods are increasingly becoming part of the mainstream food landscape. According to *Natural Foods Merchandiser*, a leading information provider for the natural, organic and healthy products industry, the natural food industry enjoyed over $81 billion in total revenue in 2010, and grew over 7% in 2009.[14] The market for all natural and organic foods grew 9% in 2010 to $39 billion, and 2010 sales were 63% higher than sales in 2005.[15]

50. Consumers desire "All Natural" ingredients in food products for a myriad of reasons, including wanting to live a healthier lifestyle, perceived benefits in avoiding disease and other chronic conditions, as well as to increase weight loss and avoid chemical additives in their food. The "All Natural" branding also appears to appeal to individual consumers' interest in

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[14] *See Natural and Organic Products Industry Sales Hit $81 Billion*, Natural Foods Merchandiser, (June 1, 2011), available at: http://www.prnewswire.com/news-releases/natural-and-organic-products-industry-sales-hit-81-billion-122958763.html

[15] http://www.marketwired.com/press-release/natural-and-organic-food-and-beverage-market-to-double-by-2015-1525854.htm (last visited October 26, 2015).

supporting sustainable living and environmentally sensitive food consumption, helping the environment, assisting local farmers, assisting factory workers who would otherwise be exposed to synthetic and hazardous substances, and financially supporting the companies that share these values. As a result, consumers are willing to pay a higher price for "All Natural" food and beverages.

51. According to an article in *The Economist*, "natural" products are a fast growing market because of the power of "mother nature" in the hands of marketers, which conjures up images of heart-warming wholesomeness and rustic simplicity.[16]

52. As a result of Defendant's deception, consumers – including Plaintiffs and members of the proposed Class – have purchased Products that contain synthetic or highly chemically processed ingredients in reliance on Defendant's "All Natural" claims. Moreover, Plaintiffs and Class members have paid a premium for the Products over other similar food products sold on the market. A sample of other similar food products are provided below:

Product	Brand	Price	Retailer
Marinara Sauce, 24 oz.	Barilla	$1.99	Amazon.com
Chunky Garden Tomato, Onion, & Garlic Sauce, 24 oz.	Prego	$1.87	Target.com
Spicy Italian-style Sauce, 24 oz.	Ragu	$1.77	Target.com
Marinara Pasta Sauce, 24 oz.	**Newman's Own**	**$2.49**	**Target**

53. By representing that the Products were "All Natural," Defendants sought to capitalize on consumers' preference for natural Products and the association between such Products and a wholesome way of life. Consumers are willing to pay more for natural products because of this

[16] *Chemical Blessings: What Rousseau got Wrong*, The Economist, (October 26, 2015) available at: http://www.economist.com/node/10633398

association as well as the perceived higher quality, health and safety benefits and low impact on the environment associated with products labeled as "natural."

Defendant Deceptively Advertises on the Labeling of NEWMAN'S OWN® Pasta Sauce Products that the Product is "All Natural" to Induce Consumers to Purchase the Product

54. The Products were labeled "All Natural" yet contain synthetic, non-natural and extensively processed ingredient citric acid.

55. The "All Natural" claim appears on the labels and website pages of the Products, as shown in **EXHIBIT A**.

56. Within the last twelve months, Plaintiff WONG purchased the 24 oz. NEWMAN'S OWN® Marinara Pasta Sauce Product for personal consumption. Plaintiff WONG was attracted to this Product because he prefers to consume and use natural products for health reasons. Plaintiff WONG believes that natural products contain only ingredients that occur in nature or are minimally processed, which would not include citric acid. As a result, the Products with their deceptive "All Natural" claims on the Product packaging had no value to Plaintiff WONG. Defendants marketed the Products as "All Natural" to induce consumers to purchase the Products.

Plaintiffs Relied on Defendant's "All Natural" Statement

57. Under the FDCA, the term "false" has its usual meaning of "untruthful," while the term "misleading" is a term of art. Misbranding reaches not only false claims, but also those claims that might be technically true, although still misleading. If any one representation in the labeling is misleading, the entire food is misbranded. No other statement in the labeling cures a misleading statement. "Misleading" is judged in reference to "the ignorant, the unthinking and the credulous who, when making a purchase, do not stop to analyze." *United States v. El-O-Pathic Pharmacy*, 192 F.2d 62, 75 (9th Cir. 1951). Under the FDCA, it is not necessary to prove

that anyone was actually misled. New York law similarly does not require proof of actual reliance. *See Pelman ex rel. Pelman v. McDonald's Corp.*, 396 F. Supp. 2d 439, 445 (S.D.N.Y. 2005).

58. New York and federal law have placed similar requirements on food companies that are designed to ensure that the claims companies are making about their products to consumers are truthful and accurate.

59. Defendant's labeling and advertising of the Products violate various state laws against misbranding. New York State law broadly prohibits the misbranding of food in language identical to that found in regulations promulgated pursuant to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 *et seq.*:

> *Pursuant to N.Y. State Education Law § 6815, "[f]ood shall be deemed to be misbranded: 1. If its labeling is false or misleading in any particular…"*

60. Defendant's Products were misbranded under New York law because they misled Plaintiffs and Class members about the naturalness of the Products.

61. Although Defendant marketed the Products as "All Natural", they failed to also disclose material information about the Products; the fact that they contained unnatural, synthetic, and/or artificial ingredients. This non-disclosure, while at the same time branding the Products as "All Natural" was deceptive and likely to mislead a reasonable consumer.

62. A representation that a product is "All Natural" is material to a reasonable consumer when deciding to purchase a product. According to Consumers Union, "Eighty-six percent of consumers expect a 'natural' label to mean processed foods do not contain any artificial ingredients."[17]

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[17] Notice of the Federal Trade Commission, Comments of Consumers Union on Proposed Guides for Use of Environmental Marketing Claims, 16 CFR § 260, Dec. 10, 2010, http://www.ftc.gov/os/comments/greenguiderevisions/00289-57072.pdf (last visited August 9, 2014).

63. Plaintiffs did, and a reasonable consumer would, attach importance to whether Defendant's Products are "misbranded," i.e., not legally salable, or capable of legal possession, and/or contain highly processed ingredients.

64. Plaintiffs did not know, and had no reason to know, that the Products were not "All Natural."

65. Defendant's Product labeling and misleading website was a material factor in Plaintiffs' and Class members' decisions to purchase the Products. Relying on Defendant's Product labeling and misleading website, Plaintiffs and Class members believed that they were getting Products that were "All Natural." Had Plaintiffs known Defendant's Products contained a highly processed, non-natural ingredient, they would not have purchased them.

66. Defendant's Product labeling as alleged herein is deceptive and misleading and was designed to increase sales of the Products. Defendant's misrepresentations are part of their systematic product packaging practice.

67. At the point of sale, Plaintiffs and Class members did not know, and had no reason to know, that the Products were misbranded as set forth herein, and would not have bought the Products had they known the truth about them.

68. Defendant's false and deceptive labeling is misleading and in violation of FDA and consumer protection laws of each of the fifty states and the District of Columbia, and the Products at issue are misbranded as a matter of law. Misbranded products cannot be legally manufactured, advertised, distributed, held or sold in the United States. Plaintiffs and Class members would not have bought the Products had they known they were misbranded and illegal to sell or possess.

69. As a result of Defendant's misrepresentations, Plaintiffs and thousands of others throughout the United States purchased the Products.

70. Plaintiffs and the Class (defined below) have been damaged by Defendant's deceptive and unfair conduct in that they purchased Products with false and deceptive labeling and paid premium prices they otherwise would not have paid over other comparable products that did not claim to be "All Natural."

CLASS ACTION ALLEGATIONS

The Nationwide Class

71. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following class (the "Class):

> All persons or entities in the United States who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

The New York Class

72. Plaintiff WONG seeks to represent a class consisting of the following subclass (the "New York Class"):

> All New York residents who made retail purchases of the Products during the applicable limitations period, and/or such subclasses as the Court may deem appropriate.

73. The proposed Classes exclude current and former officers and directors of Defendant, members of the immediate families of the officers and directors of Defendant, Defendant's legal representatives, heirs, successors, assigns, and any entity in which they have or have had a controlling interest, and the judicial officer to whom this lawsuit is assigned.

74. Plaintiffs reserve the right to revise the Class definition based on facts learned in the course of litigating this matter.

75. This action is proper for class treatment under Rules 23(b)(1)(B) and 23(b)(3) of the Federal Rules of Civil Procedure. While the exact number and identities of other Class members are unknown to Plaintiffs at this time, Plaintiffs are informed and believe that there are thousands of Class members. Thus, the Class is so numerous that individual joinder of all Class members is impracticable.

76. Questions of law and fact arise from Defendant's conduct described herein. Such questions are common to all Class members and predominate over any questions affecting only individual Class members and include:

a. whether labeling "All Natural" on Products containing citric acid, was false and misleading;

b. whether Defendant engaged in a marketing practice intended to deceive consumers by labeling "All Natural" on Products containing citric acid;

c. whether Defendant deprived Plaintiffs and the Class of the benefit of the bargain because the Products purchased were different than what Defendant warranted;

d. whether Defendant deprived Plaintiffs and the Class of the benefit of the bargain because the Products they purchased had less value than what was represented by Defendant;

e. whether Defendant caused Plaintiffs and the Class to purchase a substance that was other than what was represented by Defendant;

f. whether Defendant caused Plaintiffs and the Class to purchase Products that were artificial, synthetic, or otherwise unnatural;

g. whether Defendant has been unjustly enriched at the expense of Plaintiffs and other Class members by their misconduct;

h. whether Defendant must disgorge any and all profits they have made as a result of their misconduct; and

i. whether Defendant should be barred from marketing the Products as "All Natural."

77. Plaintiffs' claims are typical of those of the Class members because Plaintiffs and the other Class members sustained damages arising out of the same wrongful conduct, as detailed herein. Plaintiffs purchased Defendant's Products and sustained similar injuries arising out of Defendant's conduct in violation of New York State law. Defendant's unlawful, unfair and fraudulent actions concern the same business practices described herein irrespective of where they occurred or were experienced. The injuries of the Class were caused directly by Defendant's wrongful misconduct. In addition, the factual underpinning of Defendant's misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiffs' claims arise from the same practices and course of conduct that give rise to the claims of the members of the Class and are based on the same legal theories.

78. Plaintiffs will fairly and adequately represent and pursue the interests of the Class and have retained competent counsel experienced in prosecuting nationwide class actions. Plaintiffs understand the nature of their claims herein, have no disqualifying conditions, and will vigorously represent the interests of the Class. Neither Plaintiffs nor Plaintiffs' counsel have any interests that conflict with or are antagonistic to the interests of the Class. Plaintiffs have retained highly competent and experienced class action attorneys to represent their interests and those of the Class. Plaintiffs and Plaintiffs' counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs and counsel are aware of their fiduciary

responsibilities to the Class and will diligently discharge those duties by vigorously seeking the maximum possible recovery for the Class.

79. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The damages suffered by any individual class member are too small to make it economically feasible for an individual class member to prosecute a separate action, and it is desirable for judicial efficiency to concentrate the litigation of the claims in this forum. Furthermore, the adjudication of this controversy through a class action will avoid the potentially inconsistent and conflicting adjudications of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

80. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(2) are met, as Defendant has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive or equitable relief with respect to the Class as a whole.

81. The prerequisites to maintaining a class action for injunctive relief or equitable relief pursuant to Rule 23(b)(3) are met, as questions of law or fact common to the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

82. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. Additionally, individual actions may be dispositive of the interest of all members of the Class, although certain Class members are not parties to such actions.

83. Defendant's conduct is generally applicable to the Class as a whole and Plaintiffs seek, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendant's

systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

CAUSES OF ACTION

COUNT I

INJUNCTION FOR VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

84. Plaintiff WONG realleges and incorporates by reference the allegations contained in all preceding paragraphs and further alleges as follows:

85. Plaintiff WONG brings this claim on behalf of himself and the other members of the Class for an injunction for violations of New York's Deceptive Acts or Practices Law, Gen. Bus. Law § 349 ("NY GBL").

86. NY GBL § 349 provides that "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are . . . unlawful."

87. Under the § 349, it is not necessary to prove justifiable reliance. ("To the extent that the Appellate Division order imposed a reliance requirement on General Business Law [§] 349 … claims, it was error. Justifiable reliance by the plaintiff is not an element of the statutory claim." *Koch v. Acker, Merrall & Condit Co.*, 18 N.Y.3d 940, 941 (N.Y. App. Div. 2012) (internal citations omitted)).

88. Any person who has been injured by reason of any violation of the NY GBL may bring an action in their own name to enjoin such unlawful act or practice, an action to recover their actual damages or fifty dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars, if the court finds the Defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

89. The practices employed by Defendant, whereby Defendant advertised, promoted, and marketed that their Products are "All Natural" were unfair, deceptive, and misleading and are in violation of the NY GBL § 349.

90. The foregoing deceptive acts and practices were directed at customers.

91. Defendant should be enjoined from marketing their products as "All Natural" as described above pursuant to NY GBL § 349.

92. Plaintiff WONG, on behalf of himself and all others similarly situated, respectfully demands a judgment enjoining Defendant's conduct, awarding costs of this proceeding and attorneys' fees, as provided by NY GBL, and such other relief as this Court deems just and proper.

COUNT II

VIOLATIONS OF NEW YORK GENERAL BUSINESS LAW § 349 (DECEPTIVE AND UNFAIR TRADE PRACTICES ACT)

93. Plaintiff WONG realleges and incorporates by reference the allegations contained in all preceding paragraphs and further alleges as follows:

94. Plaintiff WONG brings this claim on behalf of himself and the other members of the Class for violations of NY GBL § 349.

95. Defendant's business act and practices and/or omissions alleged herein constitute deceptive acts or practices under NY GBL § 349, which were enacted to protect the consuming public from those who engage in unconscionable, deceptive or unfair acts or practices in the conduct of any business, trade or commerce.

96. The practices of Defendant described throughout this Complaint, were specifically directed to consumers and violate the NY GBL § 349 for, *inter alia*, one or more of the following reasons:

a. Defendant engaged in deceptive, unfair and unconscionable commercial practices in failing to reveal material facts and information about the Products, which did, or tended to, mislead Plaintiff and the Class about facts that could not reasonably be known by them;

b. Defendants knowingly and falsely represented and advertised that the Products are "All Natural" with an intent to cause Plaintiff and members of the Class to believe that they are made with unadulterated, unprocessed ingredients, even though they are not;

c. Defendant failed to reveal facts that were material to the transactions in light of representations of fact made in a positive manner;

d. Defendant caused Plaintiff and the Class to suffer a probability of confusion and a misunderstanding of legal rights, obligations and/or remedies by and through their conduct;

e. Defendant failed to reveal material facts to Plaintiff and the Class with the intent that Plaintiff and the Class members rely upon the omission;

f. Defendant made material representations and statements of fact to Plaintiff and the Class that resulted in Plaintiff and the Class reasonably believing the represented or suggested state of affairs to be other than what they actually were; and

g. Defendant intended that Plaintiff and the members of the Class rely on their misrepresentations and omissions, so that Plaintiff and Class members would purchase the Products.

97. The practices employed by Defendant, whereby Defendant advertised, promoted, and marketed that their Products were "All Natural" were unfair, deceptive, and misleading and are in violation of NY GBL § 349.

98. Under all of the circumstances, Defendant's conduct in employing these unfair and deceptive trade practices was malicious, willful, wanton and outrageous such as to shock the conscience of the community and warrant the imposition of punitive damages.

99. Defendant's actions impact the public interest because Plaintiff and members of the Class were injured in exactly the same way as thousands of others purchasing the Products as a result of and pursuant to Defendant's generalized course of deception.

100. By committing the acts alleged in this Complaint, Defendant has misled Plaintiff and the Class into purchasing the Products, in part or in whole, due to an erroneous belief that the Products were "All Natural." This is a deceptive business practice that violates NY GBL § 349.

101. Defendant's "All Natural" claim misled Plaintiff, and is likely in the future to mislead reasonable consumers. Had Plaintiff and members of the Class known of the true facts about the Products, they would not have purchased the Products and/or paid substantially less for similar products.

102. The foregoing deceptive acts, omissions and practices were directed at consumers.

103. The foregoing deceptive acts, omissions and practices set forth in connection with Defendants' violations of NY GBL § 349 proximately caused Plaintiff and other members of the Class to suffer actual damages in the form of, inter alia, monies spent to purchase the Products.

Plaintiff and other members of the Class are entitled to recover such damages, together with equitable and declaratory relief, appropriate damages, including punitive damages, attorneys' fees and costs.

COUNT III

NEGLIGENT MISREPRESENTATION
(All States)

104. Plaintiffs reallege and incorporate by reference the allegations contained in all preceding paragraphs and further allege as follows:

105. Defendant, directly or through their agents and employees, made false representations, concealments, and nondisclosures to Plaintiffs and members of the Class.

106. In making the representations of fact to Plaintiffs and members of the Class described herein, Defendant has failed to fulfill their duties to disclose the material facts set forth above. The direct and proximate cause of this failure to disclose was Defendant's negligence and carelessness.

107. Defendant, in making the misrepresentations and omissions, and in doing the acts alleged above, knew or reasonably should have known that the representations were not true. Defendant made and intended the misrepresentations to induce the reliance of Plaintiffs and members of the Class.

108. Plaintiffs and members of the Class relied upon these false representations and nondisclosures by Defendant when purchasing the Products, which reliance was justified and reasonably foreseeable.

109. As a result of Defendant's wrongful conduct, Plaintiffs and members of the Class have suffered and continue to suffer economic losses and other general and specific damages, including but not limited to the amounts paid for the Products, and any interest that

would have been accrued on those monies, all in an amount to be determined according to proof at time of trial.

COUNT IV

BREACH OF EXPRESS WARRANTIES
(All States)

110. Plaintiffs reallege and incorporate by reference the allegations contained in all preceding paragraphs and further allege as follows:

111. Defendant provided Plaintiffs and other members of the Class with written express warranties, including, but not limited to, warranties that the Products contain natural or all-natural ingredients. The natural claims made by Defendant are an affirmation of fact that became part of the basis of the bargain and created an express warranty that the good would conform to the stated promise. Plaintiffs placed importance on Defendant's natural claims.

112. Defendant breached the terms of this contract, including the express warranties, with Plaintiffs and the Class by not providing Products with the natures and quality as promised.

113. As a proximate result of Defendant's breach of warranties, Plaintiffs and Class members have suffered damages in an amount to be determined by the Court and/or jury, in that, among other things, they purchased and paid for products that did not conform to what Defendant promised in their promotion, marketing, advertising, packaging and labeling, and they were deprived of the benefit of their bargain and spent money on products that did not have any value or had less value than warranted or products that they would not have purchased and used had they known the true facts about them.

COUNT V

UNJUST ENRICHMENT
(All States)

114. Plaintiffs reallege and incorporate by reference the allegations contained in all preceding paragraphs and further allege as follows:

115. Defendant received certain monies as a result of their uniform deceptive marketing of the Products that are excessive and unreasonable.

116. Plaintiffs and the Class conferred a benefit on Defendant through purchasing the Products, and Defendant has knowledge of this benefit and has voluntarily accepted and retained the benefits conferred on them.

117. Defendant will be unjustly enriched if they are allowed to retain such funds, and each Class member is entitled to an amount equal to the amount they enriched Defendant and for which Defendant has been unjustly enriched.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated, seek judgment against Defendants, as follows:

a. An Order that this action be maintained as a class action and appointing Plaintiffs as representatives of the Nationwide Class and/or their respective state Class;
b. An Order appointing the undersigned attorney as class counsel in this action;
c. Restitution and disgorgement of all amounts obtained by Defendant as a result of their misconduct, together with interest thereon from the date of payment, to the victims of such violations;
d. All recoverable compensatory and other damages sustained by Plaintiffs and the Class;

e. Actual and/or statutory damages for injuries suffered by Plaintiffs and the Class and in the maximum amount permitted by applicable law;

f. An order (i) requiring Defendant to immediately cease their wrongful conduct as set forth in this Complaint; (ii) enjoining Defendant from continuing to misrepresent and conceal material information and conduct business via the unlawful, unfair and deceptive business acts and practices complained of herein; (iii) ordering Defendant to engage in a corrective advertising campaign; and (iv) requiring Defendant to reimburse Plaintiffs and all members of the Class the amounts paid for the Products;

g. Statutory pre-judgment and post-judgment interest on any amounts;

h. Payment of reasonable attorneys' fees and costs; and

i. Such other relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs, on behalf of themselves and all others similarly situated, demand a trial by jury on all questions of fact raised by the Complaint.

Dated: November 30, 2016

Respectfully submitted,

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